

1 ROB BONTA, State Bar No. 202668
Attorney General of California
2 CHAD A. STEGEMAN, State Bar No. 225745
Supervising Deputy Attorney General
3 CORINNA S. ARBITER, State Bar No. 273074
Deputy Attorney General
4 600 West Broadway, Suite 1800
San Diego, CA 92101
5 P.O. Box 85266
San Diego, CA 92186-5266
6 Telephone: (619) 321-5799
Fax: (619) 645-2061
7 E-mail: Corinna.Arbiter@doj.ca.gov
Attorneys for Defendant
8 *C. Sysouvanh*

9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE EASTERN DISTRICT OF CALIFORNIA
11 SACRAMENTO DIVISION
12

13 **DONELL HAYNIE,**

14 Plaintiff,

15 v.

16 **C. SYSOUVAHN,**

17 Defendant.
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2:23-cv-01077-CKD

**DEFENDANT SYSOUVANH'S
OPPOSITION TO PLAINTIFF'S
OBJECTIONS TO FINDINGS AND
RECOMMENDATIONS, ECF NO. 9**

Judge: Hon. Kimberly J. Mueller
Trial Date: Not Set
Action Filed: June 29, 2022

INTRODUCTION

On July 17, 2023, Defendant C. Sysouvanh properly and timely responded to Plaintiff Donnell Haynie’s filing, ECF No. 8, Objections to the Findings & Recommendations, ECF No. 6.

On July 13, 2023, Haynie filed identical Objections—ECF No. 9—to the Findings & Recommendations, ECF No. 6. In the second filing, he added the state court case number to the caption, but the points and authorities seem to be identical. (*See* Objections, ECF Nos. 8 and 9.) In an abundance of caution, given Haynie’s penchant to try to win by technical default, Sysouvanh files and serves this opposition to ECF No. 9, Haynie’s second Objections to the Findings & Recommendations.

ARGUMENT

On June 29, 2022, Haynie, an inmate in the custody of the California Department of Corrections and Rehabilitation, filed a Complaint captioned as *Donell Haynie v. Cassandra K. Sysouvanh*, in the State of California Superior Court, Sacramento County, Case No. 34-2022-00322015. (Notice of Removal at 5, ECF No. 1.) The Complaint, served on May 4, 2023, alleges a federal claim under the Eighth Amendment of the United States Constitution and a Prison Rape Elimination Act (PREA) claim. (*Id.* at 8.) Defendant Sysouvanh removed the matter to federal court on June 5, 2023. The Magistrate Judge recommended dismissal of the PREA claim for failure to state a claim and dismissal of the Eighth Amendment claim, which, among other things, is duplicative of a claim in another identical lawsuit filed by Plaintiff. (Findings and Recommendations, ECF No. 6.)

Haynie objects to the Findings and Recommendations (F&R) incorrectly claiming that Sysouvanh removed the case two days late because Sysouvanh was served on May 4, 2023, and removal took place on June 5, 2023. (Objections, ECF Nos. 8, 9.) Haynie is wrong. The thirtieth day after service fell on June 3, 2023, a Saturday. Removal was effected on the following Monday. The California Code of Civil Procedure the California Rules of Court, and the Federal Rules of Civil Procedure follow the same computation of time when a deadline falls on a weekend. If the last day for an action to be completed falls on a Saturday, Sunday, or legal holiday, that day is excluded from the computation of time. Cal. Code Civ. Proc. § 12; California

Rules of Court rule 1.10; Fed. R. Civ. Proc. § 6. In other words, if the last date of the time to perform an act falls on a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday. Here, Sysouvanh was served on May 4, 2023. The thirtieth day after May 4, 2023, fell on a Saturday, so her time to remove continued to run until the next business day – Monday, June 5, 2023, and that is the date she removed the case. Thus, removal was timely. Cal. Code Civ. Proc. § 12; Cal. R. 1.10; Fed. R. Civ. P. 6; *Student A. By & Through Mother of Student A. v. Metcho*, 710 F.Supp. 267, 268 (N.D. Cal. 1989) (applying Federal Rules of Civil Procedure § 6 to 42 U.S.C. § 1446(b)).

Neither *Dietrich v. Boeing Co.*, 14 F.4th 1089 (9th Cir. 2021) nor *Salmonson v. Euromarket Designs, Inc.*, No. CV 11-2446 PSG (PLAx), 2011 U.S. Dist. LEXIS 61538 (C.D. Cal. June 9, 2011) are on point with the case at bar. Plaintiff appears to argue they apply because both state the 30-day rule for removal pursuant to 28 U.S.C. § 1446. However, *Dietrich* analyzes when the removal clock begins to run when the grounds for removal is not made clear on the face of the complaint. *Dietrich*, 14 F.4th at 1093. The court adopted the “unequivocally clear and certain standard” as the standard of removal, holding an amended pleading, motion, order, or other paper must make a ground for removal unequivocally clear and certain before the removal clock begins under the second pathway. (*Id.* at 1095.) *Salmonson* also analyzes removal under the second pathway, finding there were no grounds to remove the case to federal court because the defendant never received anything that would have triggered the second 30-day time frame. *Salmonson*, No. CV 11-2446 PSG (PLAx), 2011 U.S. Dist. LEXIS 61538, at *1.

Neither case analyzes the computation of time rules, which is the sole basis for Haynie’s objection. Sysouvanh removed the case under the first pathway of the 28 U.S.C. § 1446 because the basis for removal was clear on the face of the complaint, which alleged a violation of the U.S. Constitution. Sysouvanh timely removed because the 30th day after she was served fell on a Saturday and she removed the following Monday in accordance with the California Rules of Court, rule 1.10, California Code of Civil Procedure § 12, and Federal Rules of Civil Procedure § 6.

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CONCLUSION

Based on the foregoing, Sysouvanh requests that the Court overrule Haynie's Objections to the Findings & Recommendations.

Dated: August 3, 2023

Respectfully submitted,

ROB BONTA
Attorney General of California
CHAD A. STEGEMAN
Supervising Deputy Attorney General

/s/ Corinna S. Arbiter
CORINNA S. ARBITER
Deputy Attorney General
Attorneys for Defendant
C. Sysouvanh

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CERTIFICATE OF SERVICE

Case Name: **Donell Haynie (V-26710) v.
Sysouvanh**

No. **2:23-cv-01077-CKD**

I hereby certify that on August 3, 2023, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

DEFENDANT SYSOUVANH'S OPPOSITION TO PLAINTIFF'S OBJECTIONS TO FINDINGS AND RECOMMENDATIONS, ECF NO. 9

Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on August 3, 2023, at San Diego, California.

C. Krystof

Declarant for eFiling

/s/ C. Krystof

Signature

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

I further certify that some of the participants in the case are not registered CM/ECF users. On August 3, 2023, the foregoing document(s) have been mailed in the Office of the Attorney General's internal mail system, by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within three (3) calendar days to the following non-CM/ECF participants:

Donell Haynie
V26710
California Substance Abuse Treatment
Facility & State Prison, Corcoran
P.O. Box 7100
Corcoran, CA 93212-7100
Plaintiff in pro per

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on August 3, 2023, at San Diego, California.

A. Carrillo

Declarant for Service by U.S. Mail

/s/ A. Carrillo

Signature

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